IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.W.P. No. 1424 of 2003
Date of Decision: 14.5.2007

Sanjeev Jain.

..... Petitioner

Versus

Union of India and others.

..... Respondents

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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Present: Shri Vishal Munjal and Ms.Bhavna Gupta, Advocate for the petitioners.
Mrs. Daya Chaudhary, Assistant Solicitor General of India, for the respondents.

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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MAHESH GROVER,J.

The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for summoning and quashing of detention order dated 22.8.2003 passed by the Joint Secretary (COFEPOSA) to Government of India, Department of Revenue, Ministry of Finance, Central Economic Intelligence Bureau, New Delhi (respondent no.2).

The petitioner, who is carrying on his business of exports under

the name and style of M/S Siddhachalam Exports Pvt. Ltd., Delhi, was alleged to have committed a customs fraud. He was allegedly involved in fraudulent export under claim of `Duty Drawback' of Rs.49,75,536/- by setting up seven shipping bills and declared FOB value of the goods (Ladies Top and Denim Shirts) as Rs.4,14,63,360/- and in another case, in fraudulent export under `Duty Drawback" of Rs.9,36,720/- against six shipping bills by declaring the FOB value of the goods, i.e., Denim Pants (Jeans) and Nickel Welding Electrodes (containing 99% Nickel) as Rs.73,98,000/-. On enquiry, it was revealed that he had inflated the FOB value to the extent of five to nine times. Actually, he had imported rags and was exporting the clothes by re-packaging and re-labeling, whereas the Nickel Welding Electrodes were mainly Iron Electrodes.

A raid was accordingly conducted at the residence of the petitioner in Delhi on 17.4.2003 and he was arrested a day after, i.e. on 18.4.2003. His petition for bail was accepted by the Delhi High Court on 16.6.2003. A detention order is stated to have been passed against him on 22.8.2003. However, the same is not a part of this petition as the petitioner is said to be evading the service of the said order.

The petitioner has prayed for quashing of the aforesaid order, inter-alia, on the grounds that the same has been passed with a mala fide intention and that during custody, he was forced to sign some blank papers which have now been used purportedly for a confession and it is being attributed to him. He has also stated that the detention order is contrary to the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 (for short, `the COFEPOSA Act') and that none of the grounds mentioned therein fall within the purview thereof.

Respondent nos.1 and 2 have filed their reply by way of affidavits dated 11.2.2004 and 10.3.2004 of Shri R.K.Gupta, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi. The maintainability of the writ petition has been mainly challenged on the grounds that the petitioner has come at the pre-detention stage and that this Court does not have the jurisdiction to entertain the same.

I have heard the learned counsel for the parties and have carefully gone through the record.

Besides making other submissions, the learned counsel for the respondents vehemently argued that this Court has no jurisdiction to entertain the present petition because the petitioner is having his office/ residence in Delhi where the invoices in question were prepared and the raid was also conducted there. Apart from that, at the time of seizure of the goods, ICD, Ballabgarh was under the jurisdiction of ICD, Tuglakabad, Delhi. Moreover, the detention order under Section 3(1) of the COFEPOSA Act was passed by respondent no.2 in Delhi.

In support of her contention, learned counsel for the respondents placed reliance on Gurdeep Kaur Versus Union of India and others, 1990(2) R.C.R. (Crl.) 20 and Rajinder Nanda Versus Union of India and others, 1998(1) R.C.R.(Crl.) 155. She further relied on the judgments of the Supreme Court in Addl.Secretary to the Government of India & others Versus Smt.Alka Subhash Gadia and another, 1992 Suppl. (1) S.C.C. 496 and Sayed Taher Bawamiya Versus Joint Secretary to the Govt. of India and others, (2000) 8 S.C.C. 630 to contend that the writ petition is liable to be dismissed as this Court is precluded from exercising its jurisdiction at the pre-detention stage.

Having considered the rival contentions, I am of view that the question of jurisdiction strikes at the heart of the matter as any judgment rendered by a Court of incompetent jurisdiction would vitiate the entire proceedings.

Therefore, I deem it imperative to examine the instant matter in the light of the serious challenge laid by the learned counsel for the respondents on the issue of jurisdiction of this Court.

Concededly, the petitioner is running his business from Delhi and is also having his residence in Delhi. He was also handling the affairs of the alleged export activities from Delhi. In view of this, merely because the consignments were seized in Haryana, it would not confer any jurisdiction to this Court to entertain the challenge of the petitioner laid to the detention order which has been passed against him. Moreover, at the relevant time, ICD, Ballabgarh was under the jurisdiction of ICD, Tuglakabad, Delhi. Further, the detention order has been passed by respondent no.2 in Delhi and the same has not been served on the petitioner as yet rendering it inexecutable for the time being.

In Gurdeep Kaur's case (supra) which was relied upon by this Court in Rajinder Nanda's case (supra), the following observations were made:-

> "In order to show that part of cause of action arose within the jurisdiction of this Court, learned counsel for the petitioner took me through the grounds of detention, Annexure P-4. In para 16 of the said grounds, it was stated that enquiries were made at House No.800, Phase IV, Mohali, the address of the companion of the detenu, namely, Amrik Singh, and it was

found that in fact that house was occupied by one Shri S.S.Padam, Manager in the Life Insurance Corporation, Mohali, since June,1988. It was further stated that in the same statement made by the detenu he had given his own address as house No.813, Phase IV, Mohali. The enquiries made in this connection revealed that the said address was not right. Learned counsel for the petitioner wants to infer from the above material that the allegations against the petitioner related to alleged smuggling/ prejudicial activities being carried on at Mohali, district Ropar in the State of Punjab, which is under the jurisdiction of this Court. After hearing the learned counsel for both the parties, I am unable to accept the above contention. It is well known that whenever a person is interrogated he is asked about his residence and some other antecedents and these facts are normally verified. It is in this connection that the petitioner appears to have mentioned about his own residential address as also of his companion. There is absolutely nothing in the detailed grounds Annexure P-4 to show that the alleged smuggling activities were allegedly carried on by the detenu at Mohali. In fact a reading of paragraph 10 of the grounds aforesaid show that the principal prejudicial activity, namely, the recovery of 350 gold biscuit of 10 tolas each of foreign origin was made on March 27,1989, in the area village Kalal in between village Gotarka and the city of Ahmedabad in the State of Gujarat from a Maruti car No. MZH-4896, in which amongst others, the detenu was travelling at that time. No part

of the prejudicial activity which may have taken place in any area under the jurisdiction of this Court has been mentioned in the grounds Annexure P-4. Simply because the detenu is a resident of Mohali, does not invest this Court any jurisdiction. It is not disputed that criminal cases for violation of various Acts are registered at Ahmedabad and they are being proceeded with."

In Rajinder Nanda's case (supra), it was held as under:-

"In the instant case, even if it be assumed for the sake of arguments that the petitioner is a resident of the State of Haryana, even then no part of cause of action in this case arose within the territorial jurisdiction of this Court. Even according to the petitioner, no part of prejudicial activity is alleged to have taken place within the territorial jurisdiction of this Court. It is, thus, evidently clear that this Court has no territorial jurisdiction to hear and decide this petition."

Having regard to the aforesaid, I do not deem it appropriate to answer any other aspect of the controversy as, in my considered opinion, this Court lacks the inherent jurisdiction to entertain this writ petition, the subject-matter of which has solely arisen within the territorial jurisdiction of Delhi High Court.

Hence, the present petition is dismissed.

May 14,2007 **(Mahesh Grover)**
"SCM" **Judge**